

No. 14704

**United States
Court of Appeals
for the Ninth Circuit**

EVELYN HUBNER,

Appellant,

vs.

LLOYD M. TUCKER, Special Agent, Internal
Revenue Service,

Appellee.

**Supplemental
Transcript of Record**

**Appeal from the United States District Court for the
Southern District of California,
Southern Division.**

FILED

JUN 20 1955

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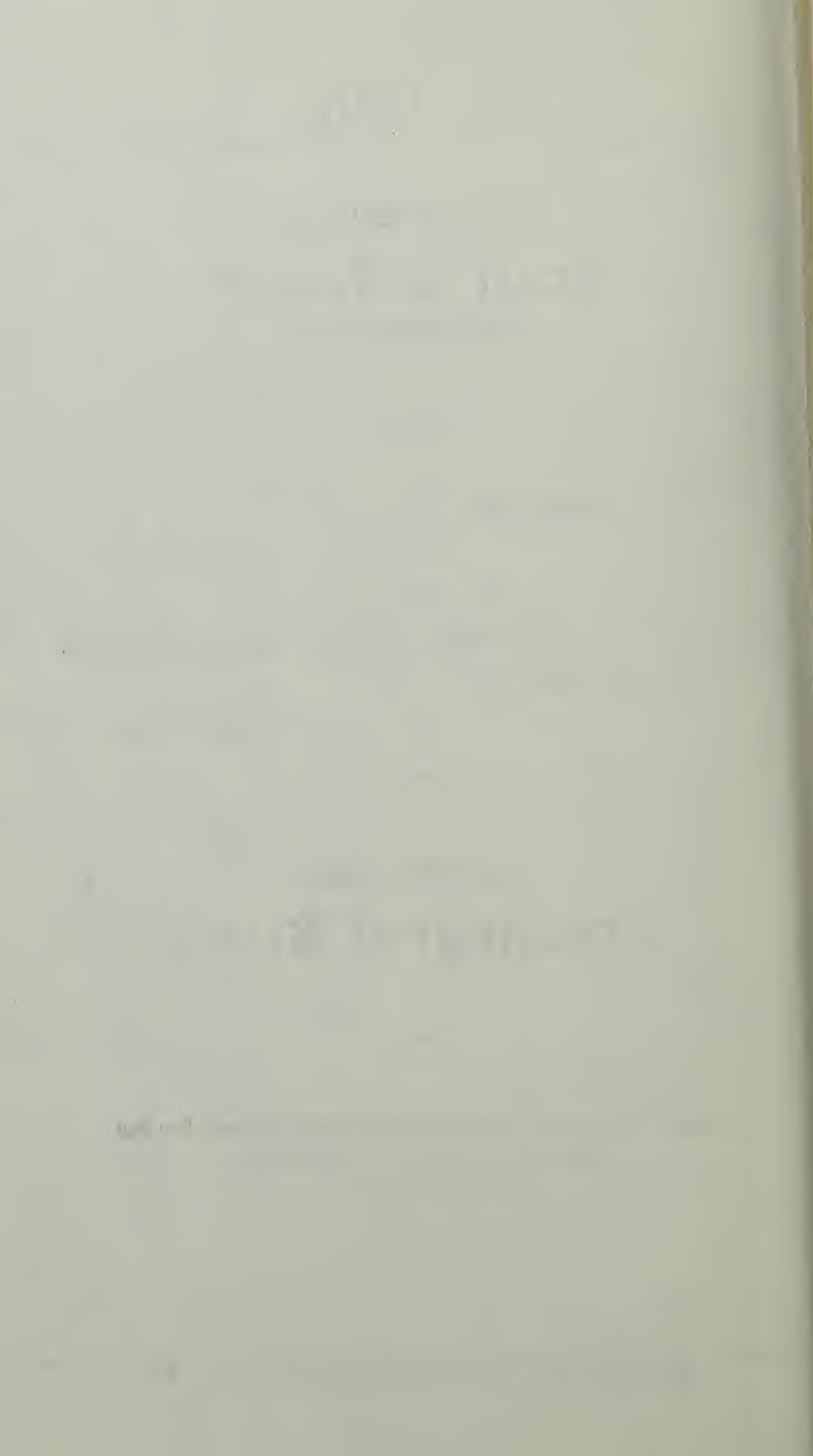
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Findings of Fact, Conclusions of Law and Order, Proposed	95
Minute Entries:	
December 22, 1954	101
January 13, 1955	102
January 21, 1955	102
February 3, 1955	103
February 8, 1955	104

United States District Court for the Southern
District of California, Southern Division

Civil No. 1691

LLOYD M. TUCKER, Special Agent, Internal
Revenue Service,

Petitioner,

vs.

EVELYN HUBNER,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

The above-entitled cause came on regularly for hearing on February 3, 1955, Laughlin E. Waters, United States Attorney, and Harry D. Steward, Assistant United States Attorney, for petitioner, respondent appearing personally and through her attorneys, Hugo M. Fisher and Robert W. Conyers, and the Court having duly considered the evidence and being fully advised in the premises now finds the following:

Findings of Fact

I.

That petitioner is a duly appointed and acting Special Agent of the Internal Revenue Service and has been authorized by the Secretary of the Treasury to perform the duties of such office and, specifically, the duties referred to in Sections 7603 and 7604 of the Internal Revenue Code, 1954. [50*]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

II.

That summons was duly issued and served by Lloyd M. Tucker on the respondent, Evelyn Hubner, on November 5, 1954, requiring that she appear before him to give testimony relating to the tax liability of Clifford O. Boren and Delta M. Boren for the years 1950, 1951, and 1952, and to bring with her and produce for examination the following books, records and papers at 527 Land Title Building, 235 Broadway, San Diego, California, on the 29th day of November, 1954, at 10:00 o'clock a.m.: Books of Account of the partnership known as the Hubner Building Company and the corporation known as the Hubner Building Company, relating to transactions had by that partnership and corporation with the above-named Clifford O. Boren and Delta M. Boren for the years above stated, together with pay checks, invoices, correspondence and any and all miscellaneous records, data, and memoranda relating to transactions between the Hubner Building Company and the above-named taxpayers.

III.

That respondent, as executrix of the estate of Elmer J. Hubner, had and now has custody of the Books of Account, pay checks, invoices, correspondence, and any and all miscellaneous records, data, and memoranda of the Hubner Building Company, a partnership, and the Hubner Building Company, a corporation, relating to transactions with Clifford O. Boren and Delta M. Boren.

IV.

That respondent did wilfully and knowingly neglect and refuse to obey said summons in that respondent did appear at the time and place set forth in the summons but did not produce said books, records, papers and data.

V.

That respondent resides in San Diego County, California, within the Southern District of California, and that this Court has jurisdiction of this matter under the provisions of the Internal Revenue Code of 1954 and Title 28 of the United States Code, Sections 1340 and 1345. [51]

VI.

That the Hubner Building Company was a corporation from February 14, 1950, to September 30, 1950; that said corporation was dissolved and business was continued as a partnership under the name of Hubner Building Company until the date of its dissolution on June 6, 1951, and its windup and final distribution on February 28, 1953. That said partnership consisted of Elmer J. Hubner, Alton B. Jackson, and Wrelton Clarke.

VII.

That said Elmer J. Hubner intermarried with respondent on May 23, 1952, which marriage was dissolved by the death of E. J. Hubner on January 12, 1954. That the only connection respondent had with or interest in said Hubner Building Company and Corporation was as the wife of E. J.

Hubner, deceased, and in no other capacity, and had no other connection with said Company or Corporation.

VIII.

That the books and records of the Hubner Building Company, a corporation, and the Hubner Building Company, a partnership, were investigated by agents of the Internal Revenue Service which investigation resulted in a final determination of the tax consequences of the corporation and an offer of final settlement of tax liability of the estate of E. J. Hubner, arising out of the operation of the Hubner Building Company, a partnership. That such tax liability is of a civil nature and would be concluded by acceptance of this offer. That no investigation of a criminal nature of the corporation or the partnership or of the estate of E. J. Hubner or the respondent is contemplated by the Internal Revenue Service.

IX.

That the taxpayers under investigation by the Internal Revenue Service are Clifford O. Boren and Delta M. Boren and not respondent, the Hubner Building Company, a corporation; the Hubner Building Company, a partnership; the estate of E. J. Hubner or any other association or individual connected with respondent.

That it has not been shown that respondent could be subjected to any criminal proceedings in connection with any of the books, records and miscellaneous documents which formed the subject matter

of the summons, and it is only shown [52] that she might be subject to some civil liability as a transferee for inadequate consideration.

That sufficient evidence of fraud by the taxpayers Clifford O. Boren and Delta M. Boren has been shown to warrant an investigation at this time. That the taxpayers, Clifford O. Boren and Delta M. Boren, have by written consent extended the statute of limitation with respect to civil liability until June 30, 1955.

X.

That the books and records and other documents as set forth in the summons are material to the investigation of the tax liability of Clifford O. Boren and Delta M. Boren and that an examination of said books, records and other documents by the Internal Revenue Service as set forth in the summons is not an unnecessary examination nor is it unreasonable as to respondent. That investigation of the Borens has been commenced and is not compelled.

Conclusions of Law

I.

That the production of the books and records and documents set forth in the summons will not incriminate respondent under the Fifth Amendment of the Constitution.

II.

That respondent should produce the books, records and documents specified in the summons in accordance with the provisions thereof.

III.

That an attachment against the person of respondent should issue for failure to produce said books, records and documents.

Now, Therefore, It Is Ordered, Adjudged and Decreed that an attachment against the person of Evelyn Hubner as and for contempt should and is hereby issued and the respondent is remanded to the custody of the Marshal, said attachment and commitment being stayed, however, until 12:00 noon, February 8, [53] 1955, with further proviso that said stay of execution shall become permanent if on or before said time and date respondent shall deliver to the Clerk of this Court Books of Account of the partnership, known as the Hubner Building Company and the corporation, known as the Hubner Building Company, relating to transactions had by that partnership and corporation with Clifford O. Boren and Delta M. Boren for the years 1950, 1951 and 1952, together with paychecks, invoices, correspondence, and any and all miscellaneous records, data, and memoranda relating to transactions between the Hubner Building Company and Clifford O. Boren and Delta M. Boren.

It Is Further Ordered that upon delivery of these Books of Account, records and other documents that agents of the Internal Revenue Service and agents of the respondent shall have the right at all reasonable times to examine said Books of Account, records and documents and may have photostatic

copies of the same or any portion thereof by designation to the Clerk who shall use the facilities of the office of the Clerk of this Court for making such photostats.

Dated:

.....,

United States District Court
Judge.

Lodged February 8, 1955. [54]

[Title of District Court and Cause.]

MINUTES OF THE COURT—
DECEMBER 22, 1954

Present: Hon. Jacob Weinberger, District Judge:

Counsel for Petitioner:

Howard R. Harris.

Counsel for Respondent: Hugo Fisher.

Proceedings:

On motion of Hugo Fisher, counsel for respondent, no objections by Attorney Harris, Assistant U. S. Attorney, for petitioner, it is ordered that respondent is allowed until January 3, 1955, to file brief; petitioner until January 10, 1955, to file reply brief, and hearing on O.S.C. is continued from December 23, 1954, until January 14, 1955, at 10:00 a.m.

EDMUND L. SMITH,
Clerk. [9]

[Title of District Court and Cause.]

MINUTES OF THE COURT—
JANUARY 13, 1955

Present: Hon. Jacob Weinberger, District Judge.

Counsel for Plaintiff: Harry D. Steward.

Counsel for Defendant: Hugo Fisher.

Proceedings:

On motion of Attorney Fisher for respondents, joined in by Harry D. Steward, Ass't U. S. Att'y, for petitioner,

It Is Ordered that cause is continued from Jan. 14, 1955, to Jan. 21, 1955, 2 p.m., for hearing pending matters.

EDMUND L. SMITH,
Clerk. [46]

[Title of District Court and Cause.]

MINUTES OF THE COURT—
JANUARY 21, 1955

Present: Hon. Jacob Weinberger, District Judge.

U. S. Att'y, by Ass't U. S. Att'y:
Howard R. Harris.

Counsel for Defendant: Hugo M. Fisher.

Defendant not present.

Proceedings:

For hearing on order to show cause.

It Is Ordered that cause is continued to Feb. 4, 1955, 2 p.m., for hearing on order to show cause.

EDMUND L. SMITH,
Clerk. [47]

[Title of District Court and Cause.]

MINUTES OF THE COURT—
FEBRUARY 3, 1955

Present: Hon. Peirson M. Hall, District Judge.

Counsel for Plaintiff:

Harry D. Steward, Ass't U. S. Att'y.

Counsel for Defendant:

Hugo Fisher and Robert W. Conyers.

Proceedings:

For hearing on order to show cause.

Court inquires whether counsel are willing to submit the matter on briefs already filed and both sides are agreeable.

Court makes a statement and grants petition.

Each of Attorneys Steward and Conyers, respectively, makes a statement.

Court Commits respondent Evelyn Hubner to jail, but execution is stayed until noon, Feb. 8, 1955, and Respondent Hubner is required to deposit all books and records with the Clerk of the Court prior to that time for inspection of all concerned,

photostatic copies to be made by Internal Revenue, if they so desire, and at their expense.

Court directs Attorney Steward to prepare order to such effect.

Respondent Hubner is present and states she understands the decision.

At 2:38 p.m. court adjourns.

EDMUND L. SMITH,
Clerk. [48]

[Title of District Court and Cause.]

MINUTES OF THE COURT—
FEBRUARY 8, 1955

Present: Hon. Peirson M. Hall, District Judge.

Counsel for Plaintiff: No appearance.

Counsel for Defendant: No appearance.

Proceedings:

On the Court's own motion It Is Ordered that further stay of execution of commitment into custody for contempt is allowed until Feb. 18, 1955, noon, on the same conditions as imposed by minute order of Feb. 3, 1955.

EDMUND L. SMITH,
Clerk. [49]

[Endorsed]: No. 14704. United States Court of Appeals for the Ninth Circuit. Evelyn Hubner, Appellant, vs. Lloyd M. Tucker, Special Agent, Internal Revenue Service, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed March 30, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

